

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 124556-001-SF

Blue Cross and Blue Shield of Michigan
Respondent

Issued and entered
this ____ day of November 2011
by R. Kevin Clinton
Commissioner

ORDER

I. BACKGROUND

On November 21, 2011, XXXXX, authorized representative of XXXXX (Petitioner), filed with the Commissioner of Financial and Insurance Regulation a request for an expedited external review under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

The Petitioner is enrolled for health care benefits through a self-funded health plan sponsored by XXXXX University for its employees. The plan is administered by Blue Cross Blue Shield of Michigan (BCBSM). Public Act No. 495 of 2006, MCL 550.1951 *et seq.*, authorizes the Commissioner to conduct external reviews for state and local government employees who receive health care benefits in a self-funded plan. Under Act 495, the reviews are conducted in the same manner as reviews conducted under the PRIRA.

In order to receive an expedited external review under the PRIRA, a physician must substantiate, either orally or in writing, that the Petitioner's life or health would be seriously jeopardized or their ability to regain maximum function would be jeopardized if an expedited review is not granted. See MCL 550.1913. In this case, a physician has not made that substantiation and, on November 21, 2011, the Commissioner accepted the request for external

review on a non-expedited basis. However, the Commissioner determined that the issue here merits prompt resolution and this external review will be completed within the time limits provided in the PRIRA for an expedited review.

The Commissioner immediately notified BCBSM of the external review and asked for the information it used to make its final adverse determination. BCBSM furnished the information on November 22, 2011.

The issue in this external review can be decided by an analysis of BCBSM's *Community Blue Group Benefits Certificate* (the certificate), the contract that defines the Petitioner's health care benefits. The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner was diagnosed with idiopathic pulmonary fibrosis and requires a lung transplant. She requested authorization to have the transplant at XXXXX Health Systems (XXXXX) in XXXXX.

XXXXX is not a BCBSM-designated facility for lung transplants and the request was denied. BCBSM does not dispute the medical necessity for the lung transplant but states it must be performed at a designated facility. The Petitioner appealed the denial through BCBSM's expedited internal grievance process. At the conclusion of the process, BCBSM maintained its denial and issued a final adverse determination dated November 15, 2011.

III. ISSUE

Did BCBSM properly deny authorization for the Petitioner's lung transplant at XXXXX?

IV. ANALYSIS

Petitioner's Argument

In letter to BCBSM dated October 28, 2011, the Petitioner's physician explained the reasons for requesting that the lung transplant be performed at XXXXX:

In my opinion it is urgent that [the Petitioner] receive a lung transplant and that she receive that transplant at XXXXX rather than one of the facilities on the BCBSM Designated Facilities list. Recovery from a lung transplant requires full-time family and observational support. When a viable lung or lung-set becomes available, transportation must occur very quickly. Therefore a lung-transplant

candidate must reside very close to the facility. Furthermore, after transplant, a recipient must continue to reside very close to the transplant facility and have full-time caregiving support, preferably family support.

It is my understanding that [the Petitioner] has no family or other support system in XXXXXX, where she lives. Nor is there a lung transplant facility near the areas where either of her sons lives. . . . However, [the Petitioner] has a family support system available in XXXXXX, as she has a grown daughter, a brother, and a sister-in-law who can provide care. In my opinion, it is a medical necessity that [the Petitioner] have a lung transplant at a center near family support, such as XXXXXX.

XXXXXX is a leading center for Idiopathic Pulmonary Fibrosis (IPF). Lung transplantation is not a generic service; it is important to have a team with experience to address IPF-specific issues that may arise during post-transplantation. The center where a patient undergoes lung transplantation is a major determination of survival rate. The lung transplantation program at XXXXXX presently performs approximately 50-60 cases per year, which ranks XXXXXX Medical Center among the top programs in the nation. The median waiting time for transplantation at XXXXXX is 4.8 months, which compares favorably to the national median waiting time and to the 10.4 month waiting time at XXXXXX University Hospital. In my opinion, it is critical that [the Petitioner] be subjected to the shortest waiting time possible for a lung transplant, especially considering the progression of her disease. I do not believe that she will survive a 10-month waiting period.

While XXXXXX University Hospital is a fine facility, the center at XXXXXX focuses on bilateral double-lung transplants and living-donor lung transplants, neither of which is the preferred type of transplantation for IPF patients. More importantly, the XXXXXX University Hospital lung transplant center performed only 11 lung transplants last year. Almost every study has determined that a patient's survival probability is much greater at centers that have performed more than 25 transplants per year.

The XXXXXX center's lung transplant recipient survival statistics for the most recent analysis of the interval 7/31/05-12/31/07 (N-132 cases), 1-month, 1-year, 3-year were 99%, 89%, 65% as contrasted to the expected rates of 96%, 86% and 62% while the 3-year survival rate was statistically higher for UCLA ($p < .05$). In comparison, XXXXXX's USTR's survival rates for the same period (N-48 cases) for 1-month, 1-year, and 3-year were 98%, 75%, 63%, which were significantly lower than the expected rates of 96%, 85% and 69%. The XXXXXX lung transplant center's most recent 5-year survival rate was 62%, compared with USC's 5-year survival rate for the same period of 45%, a difference in 5-year outcomes of almost 38%.

In my opinion, for the above reasons, it is a medical necessity for [the Petitioner] to have a lung transplant at the XXXXXX Medical Center rather than XXXXX or some other center on the BCBSM Designated Facilities list.

Respondent's Argument

In its final adverse determination of November 15, 2011, BCBSM explained its reasons for denying authorization for the transplant at XXXXX:

Our consultant took into consideration the individual circumstances of this case, but determined that:

The group covers lung transplant only when the procedure is performed at a Blue Distinction Center for Transplant (BDCT) approved site. XXXXX is not a BDCT approved site. The documentation provided has been reviewed carefully. We do not feel that the associated medical issues described or differences in median waiting times for the transplant programs under consideration constitutes a justification for an exception to the benefit. The method of distribution of organs for transplant is based on severity of illness and availability, not the specific waiting times claimed by individual institutions. Several factors may influence the way waiting times are measured, but these differences should not constitute an advantage or disadvantage to the patient.

Commissioner's Review

The certificate, in "Section 3: Coverage for Hospital, Facility and Alternatives to Hospital Care" (p. 3.18), provides that lung transplants are a covered benefit "[w]hen performed in a designated facility . . ."

"Designated facility" is defined in Section 7 of the certificate (p. 7.7):

To be a covered benefit, human organ transplants must take place in a "BCBSM-designated" facility. A **designated facility** is one that BCBSM determines to be qualified to perform a specific organ transplant. We have a list of designated facilities and will make it available to you and your physician upon request.

BCBSM does not dispute that the Petitioner's lung transplant is medically necessary. But it declined to approve the transplant at XXXXX because XXXXX is not a BCBSM-designated facility for lung transplants. BCBSM has authorized the Petitioner to have the transplant at XXX University Hospital in XXXXX which is a Blue Distinction Center for Transplants and is located near the Petitioner's family.

It is understandable that the Petitioner wants to have the transplant at a facility recommended by her physician. However, BCBSM is not required to cover the proposed lung transplant unless it is performed at a BCBSM-designated facility.

The Commissioner finds that BCBSM's denial of authorization for transplant at XXXXX was correct under the terms and conditions of the certificate.

V. ORDER

The Commissioner upholds Blue Cross Blue Shield of Michigan's November 15, 2011, final adverse determination. BCBSM is not required to authorize and cover the Petitioner's lung transplant at XXXXX Health Systems under the terms of the certificate.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner